

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMPANY APPLICATION NO.1227 OF 2007  
IN  
COMPANY PETITION NO.385 OF 2002  
IN  
B.I.F.R. CASE NO.50 OF 1998

M/s.Associated Engineers ...Petitioners

Versus

M/s.Swadeshi Mills Co.Ltd. ...Respondents

And

M/s.Svadeshi Enterprises (Hubli) ...Applicant

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Mr.Atul Damle i/b Mr.Sanjay S.Gawde for Applicant.

Mr.Kunal Damle for Respondents.

Mr.S.Ramakantha, Dy.Official Liquidator is present.

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**CORAM: A.M.KHANWILKAR, J.**

**DECEMBER 20, 2007.**

**P.C.**

1. Leave to amend to mention correct date of Agreement in prayer clause.

2. Heard Counsel for the parties.

3. From the materials on record, it is obvious that the transaction in question was entered into between the Applicant and the Respondent Company much prior to the filing of the Company Petition No.385 of 2002. The Company Petition has been filed in the year 2002 whereas the Agreement to Sell the properties referred to in the said Agreement was executed on 19th February 1988. Simultaneously, the Applicant made part payment in the sum of Rs.1,00,00,000/- (Rupees One Crore) against the total consideration amount of Rs.2,18,00,000/- (Rupees Two Crores Eighteen Lakhs). In terms of clause (4) of the Agreement, the Applicant was permitted to put up or erect sign board upon the said immovable property, issue advertisement in the newspapers or any other media announcing construction of a housing scheme to be promoted by them on the said immovable properties. The Applicant was also authorised to apply for necessary permission from the competent Authorities to comply with the Municipal Laws. The record also indicates that the Applicant subsequently paid further consideration amount of Rs.One Crore on

31st March 1989 by cheque and further sum of Rs.2,50,000/- (Rupees Two lakhs Fifty Thousand) on 25th October 1990 by cheque. The said cheques have been encashed, as can be seen from the endorsement appearing on the receipt produced by the Applicant.

4. In other words, much prior to the institution of the Company Petition, substantial amount was already paid by the Applicant to the Respondent Company by cheque. Besides, the Applicant Company was put in possession of the said property under letter dated 16th February 1989/20th March 1989.

5. Taking overall view of the matter, I have no hesitation in concluding that the transaction so effected by the Respondent Company is a bonafide and genuine transaction. The only formality that remains to consummate the transaction is to execute the Conveyance Deed. As aforesaid, the transaction is pre-liquidation period and more so, being genuine and bonafide one, the Applicant is entitled for liberty as sought in the present Judges Summons.

6. Accordingly, this Application is made absolute in terms of prayer clause (a), however, making it clear that all costs towards execution of the Conveyance for and on behalf of Respondent Company shall be borne by the Applicant. In other words, the Applicant shall pay the stamp duty, taxes, or other outgoings in relation to the said property and indemnify the Official Liquidator from such expenses/claims. Ordered accordingly.

A.M.KHANWILKAR, J.